

## REMARKS

Claims 1-20 stand rejected on various grounds. These objections and rejections are addressed in the appropriate sections below.

In view of the preceding amendments and the remarks made herein, the present application is believed to be in condition for allowance.

### **Double Patenting Rejection**

Claims 1-20 stand rejected under the judicially created doctrine of double patenting over the claims of U.S. Patent No. 6,164,509. Upon indication of allowable subject matters, the applicants will review the allowed claims to determine whether the rejection is appropriate.

### **35 U.S.C. § 112, Second Paragraph**

Claims 1-20 stand rejected under 35 U.S.C. § 112, second paragraph. Specifically, the Office Action provides that:

“Evidence that claims 1, 8, and 15 fail to correspond in scope with that which applicants regard as the invention can be found in U.S. Patent No. 6,164,509 filed July 19, 1999. In that application, applicants have stated that at least one side support member disposed adjacent one of the lateral sides and having a proximate end connected to the backpack body at a second juncture between the outer side and one of the lateral sides and a distal end connected to one of the shoulder support members, which was a reason for allowance over the prior art. This statement indicates that the invention is different from what is defined in the claims because there is no support for the breadth of the claims as presented in the original application”.

The invention claimed in this application is different than the invention claimed in the applicants' U.S. Patent No. 6,164,509. It is for the inventors to decide what bounds of invention

they will seek. *In re Saunders*, 444 F.2d 599, 607, 170 USPQ 213, 220 (CCPA 1971). The claims in the present application are those that the applicants regard as their invention. Applicants have made no admission to the contrary.

In addition, it is well settled that the subject matter set forth in the claims must, in the absence of evidence to the contrary, be presumed to be that which the applicant regards as his invention. *In re Miller*, 441 F.2d 689, 692, 169 USPQ 597 (CCPA 1971); *In re Moore*, 439 F.2d 1232, 1235, 169 USPQ 236 (CCPA 1971). The “regards” language of Section 112 may be relied upon to reject a claim only “where some material submitted by applicant, other than his specification, shows that a claim does not correspond in scope with what he regards as his invention.” *In re Conley*, 490 F.2d 972, 976, 180 USPQ 454 (CCPA 1974). Furthermore, with regards to “¶ 7.34 Rejection, 35 U.S.C. 112, 2nd paragraph, Failure To Claim Applicant’s Invention” the MPEP states “[t]his paragraph is to be used only where applicant has stated, somewhere other than in the application, as filed, that the invention is something different from what is defined in the claim(s).” 706.03(d) *Rejections Under 35 U.S.C. 112, Second Paragraph*, 700-49, MPEP 8th Ed. 2001.

The claim language in the ‘509 application that was cited by the examiner, described the claim limitations of that particular application, and included technology that the applicant consider as their invention in that particular claim. The examiner’s Reasons for Allowance in the ‘509 application pertains to the “patentability” of the claims in that particular application. It is a statement made by the examiner of that application and not a statement made by the applicants. In addition, the statement relates solely to the patentability of the allowed claims in that application and not to the scope of applicants’ overall invention.

Thus, the language cited by the examiner is not to be construed against the applicants in relation to the scope of the invention in this application. Therefore, it is respectfully requested that these rejections under §112, second paragraph, be withdrawn.

### **Rejections Under 35 U.S.C. § 102(e)**

#### **Sizemore**

Claims 1, 3, 4, 5 and 15 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sizemore. Sizemore does not anticipate any of these claims.

#### **Claim 1**

Sizemore does not show the invention found in Claim 1.

Claim 1 requires the shoulder support member to connect to a “first transition region” uniquely located between the “top region” and the “outer region” of the backpack body. The “outer region” is defined in the specification on page 5, line 9, the “outer side or region 208”, to be the side of the backpack body away from the wearer’s body.

In contrast, Sizemore discloses a backpack with shoulder support members connected to the seam between the pack’s top and the side of the backpack closest to the body. This is distinctly different from applicants’ Claim 1 where the strap is connected to the transition region between the top region and the “outer region”.

An example of the claim 1 invention is illustrated in Fig. 9. As seen in Fig. 9, the shoulder support members are connected to the region between the top region and the “outer region” of the backpack. This design shifts the force distribution toward the body of the wearer.

Sizemore does not show the invention of Claim 1. Thus, the applicants respectfully request that rejection under 35 U.S.C. §102 be withdrawn.

#### **Claims 3, 4 and 5**

Claims 3, 4, and 5 are dependent claims of Claim 1. Since Claim 1 is not anticipated by Sizemore, withdrawal of the rejection under 35 U.S.C. §102 is respectfully requested.

### Claim 15

With regards to Claim 15, Sizemore does not disclose nor suggest a backpack “body” comprising “a plurality of straps”. Sizemore discloses a backpack having a plurality of straps “connected” to the body of the backpack, but does not disclose a “backpack body” that is made up of a plurality of straps. Anticipation under § 102(e) requires the anticipating reference to disclose every element of the invention. Therefore, the applicants respectfully request that the rejection under §102(e) be withdrawn.

### Clements

Claims 1, 7-9, 11-13, 15, and 16 stand rejected under 35 U.S.C. § 102(e) as anticipated by Clements. Applicants disagree.

### Claim 1

As discussed above, Claim 1 requires the shoulder support member to connect to the transition region of between the top region and the “outer region” of the backpack body. In contrast, Clements discloses a backpack having shoulder support member connected to the section of the backpack near the body (see Fig. 4, No. 40, 41, or Fig. 7, No. 11). No suggestion is found in Clements that the shoulder straps are to be tied to the backpack body at the site specified in applicants’ Claim 1.

Clements does not show the backpack found in Claim 1. Thus, the applicants respectfully request that rejection under 35 U.S.C. §102 be withdrawn.

Claim 7

Claim 7 is a dependent claim of Claim 1. Since Claim 1 is not anticipated by Sizemore, Claim 7 is not anticipated. Withdrawal of the rejection under 35 U.S.C. §102 is respectfully requested.

Claim 8

Claim 8 specifically requires that “each shoulder support member proximal end connected to the backpack body at a first transition region between a top region of the back pack and an outer region of the backpack body”. As discussed above, Clements teaches the connection of the shoulder support member to the backpack on a surface adjacent the wearer’s back. Clements does not in any way suggest that the shoulder support member be connected to the transition region between the top region and the “outer region” of the backpack body as required by Claim 8.

Thus, withdrawal of the rejection under 35 U.S.C. § 102 is respectfully requested.

Claims 9, 11-13

Claims 9, 11-13 are dependent upon Claim 8. Since Claim 8 is not anticipated by Clements, withdrawal of the rejection under 35 U.S.C. §102 is respectfully requested.

Claim 15

With respect to Claim 15, Clements does not disclose nor suggest a backpack “body” comprising “a plurality of straps”. Although, Clements discloses a backpack having a plurality of straps connected to the body of the backpack, it does not disclose a “backpack body” made up of a plurality of straps. Applicants respectfully request that the rejection of claim 15 under §102(e) be withdrawn.

### Claim 16

With respect to Claim 16, in view of the above discussion that claim 15 is not anticipated by Clements, Claim 16, a dependent claim of claim 15, is therefore not anticipated by Clements. As such, the applicants respectfully request that the rejection under §102(e) be withdrawn

### Rejections Under 35 U.S.C. § 103(a)

Claims 6, 14, and 17 stand rejected under 35 U.S.C. § 103 as obvious over Clements in view of Lemire et al.

Applicants traverse this rejection on the grounds that *prima facie* obviousness has not been established. The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. It is well established that the Examiner may not combine references to create an obviousness rejection unless there is some suggestion or motivation in the prior art to make the combination.

Claims 6, 14 and 17 add a “yoke” component disposed along the “backpack body”. A comparison of the claimed invention with the cited art reveals that neither Clements nor Lemire describes nor suggests the yoke required by those claims. At the core of Lemire’s backpack is a semi-rigid dorsal plate (2 in Fig. 2). The dorsal plate is part of the frame for the body of the backpack, which is a separate element. The yoke (9 in Fig. 2) as described in Lemire, is a triangular yoke attached to the median upper edge of the dorsal plate (2 in Fig. 2) by a flexible and adjustable strap. Nowhere does Lemire suggest such a yoke be situated along the upper surface of the backpack body. Indeed, the dorsal plate is attached to the lower portion of the body-side of the backpack. Thus the yoke could only be attached from the middle of the overall structure as seen in Lemire’s Fig. 2. The Clements and Lemire backpacks differ both structurally and functionally from those found in Claims 6, 14, and 17.

Even taken together, these references fail to provide any suggestion or motivation to one of ordinary skill in the art to construct a yoke disposed along the backpack body top region. Given the entirely different objectives of these various references, it is not surprising that nothing in the cited art suggested their combination. The PTO has also overlooked the fact that modifications needed to construct the present invention are effectively inconsistent with the intended purpose of the primary reference itself. Applicants therefore believe that the assertion of *prima facie* obviousness is improper.

It is also an established principle that the prior art may not be modified or combined to reject claims under 35 U.S.C. §103 unless there is some motivation in the references to combine and modify them in the manner described. The presence of a “teaching away” in Clements further supports the nonobviousness of constructing a yoke disposed along the upper backpack body. Clements teaches the use of a transverse rod or bar that is “embedded” in the backpack to act as the force-spreading aid to the upper straps of the backpack. Nowhere does Clements suggest the use of a yoke or similar device attached “externally” to the backpack body.

Applicants respectfully submit that the grounds for rejection under 35 U.S.C. § 103 are improper and request that the rejection be withdrawn.

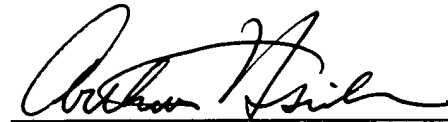
## CONCLUSION

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 430672000101. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the Specification:**

Please replace the paragraph on page 6 beginning at line 13 with the following:

Separating the various panels or side regions described above are a series of junctures or seams. For instance, a first juncture 212 is defined between top panel 202 and body side 210. Second seams or junctures 214 are similarly disposed along lines or region between the outer side 208 and the two lateral sides [208] 206. A third juncture or seam 216 defines a transition region between the bottom panel 204 and the outer side 208, and a fourth juncture or seam 218 is disposed generally between the outer side 208 and the top panel or side 202.

Please replace the paragraph at page 11 beginning on line 1:

Side support member distal end 420 is shown in Figure 3 as connected to the distal end 320 of shoulder support member 300, permanently (e.g., by stitching as shown in Figure 3) or releasably (such as by a hook and loop type fastener, an adjustable buckle, or the like). The shoulder strap 300 and side strap 400 distal ends [cam] can be connected so to form the appearance of a continuous strap.

Please replace the paragraph at page 13 beginning on line 13 with:

Another method for increasing the stiffness of the bottom panel [240] 204, useable singly or in combination with any of the features described above, is by adding one or more bottom straps or members 500. Figures 3-4, 4A, and 6-9 show a configuration in which two such bottom straps 500 are used.

Please replace the paragraph at page 17 beginning on line 13 with:

Such support members can have the variety of configurations and forms as described above with respect to bottom support members [840] 570. Note a desirable configuration shown in Figures 3 and [7-8] 7. In this embodiment, top support members 640 each has a proximal end [650] 670 connected to top side 202 and a distal end 660 which is slidingly or permanently connected to the top strap 600 via an attached D-ring or similar loop.

Please replace the paragraph at page 18 beginning at line 3 with:

These and other top support member 640 arrangements, all of which are within the scope of the invention, help support the load borne by the wearer and assist the top straps in keeping the body 200 square at the top and keeping the backpack high relative to the wearer's shoulders. Due to the downward force acting on the top support members 640, these members are placed under stress as they assist in bearing the load of body 200 at their distal end [648] 660 where they engage top straps 600. It is therefore important that the point of connection between the distal end 660 of top support member 640 and top strap 600 be designed for durability and load-bearing functionality. This can be accomplished by reinforcing the top support member distal end [640] 660 (by, e.g. affixing additional material), etc. In addition, a low-friction abrasion-resistant coating can be placed on either or both the distal end 640 and top strap 600 where they directly interface to prevent binding and to protect the materials from abrasion damage.

**In the Claims:**

Please add new claims 21-26.